

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
JAMES H. ROSE)

Appearances:

For Appellant: A. J. Porth

Frank Brockway

For Respondent: John A. Stilwell, Jr.
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of James H. Rose against proposed assessments of additional personal income tax and penalties in the total amounts of \$173.25, \$325.50 and \$424.50 for the years 1973, 1974 and 1975, respectively.

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The question for decision is whether appellant has established error in respondent's proposed assessments of additional tax or in the penalties assessed **for** the years in question.

Appellant is a barber in Garden Grove, California. On the personal income tax Form 540's which he submitted for 1973, 1974 and 1975, appellant entered "\$0000.00," "None," or cited various amendments to the United States Constitution in the spaces provided for financial data and other information. Attached to the 1973 and 1974 forms were lengthy documents setting forth constitutional arguments in support of appellant's contention that he properly refrained from providing the information requested. Later, appellant submitted "amended returns" for 1973 and 1974, which were equally devoid of financial information.

Respondent advised appellant that such incomplete forms do not **constitute** valid returns and demanded that he file proper returns. He refused to do so, saying that he was not required to file. In the absence of any evidence regarding appellant's actual income **during** 1973, 1974 and 1975, respondent referred to the "Handbook of Labor Statistics," published by the United States Department of Labor. On the basis, of statistics contained in that publication, respondent estimated appellant's income as a full-time barber for the years in question, issuing deficiency assessments reflecting those income estimates. Included in the assessments were penalties for failure to file a timely return (Rev. & Tax. Code, S.18681) and for failure to file on notice and demand (Rev. & Tax. Code, § 18683).

Appellant's basic contention appears to be. that in the appeal years he did not have sufficient income to require the filing of returns because he was paid for his services in Federal Reserve notes rather than in lawful, constitutional dollars. Appellant cites various provisions of the United States Constitution which he believes support that conclusion. He also makes a number of 'assertions concerning the alleged unconstitutionality of the federal and state systems of taxation. Finally, appellant complains of not having been afforded a trial by jury in these administrative proceedings.

The issues and arguments presented by this appeal have been thoroughly discussed in prior cases before this board. We have repeatedly noted their

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frivolity. (See, e.g., Appeal of Arthur J. Porth, Cal. St. Bd. of Equal., Jan. 9, 1979; Appeal of Marvin L. and Betty J. Robey, Cal. St. Bd. of Equal., Jan. 9, 1979; Appeal of Myrtle T. Peterson, Cal. St. Bd. of Equal., April 6, 1978; Appeal of Donald H. Lichtle, Cal. St. Bd. of Equal., Oct. 6, 1976.) To the extent that appellant's arguments **differ from** those made in earlier cases, we have examined them and found them to be equally without merit. Although appellant complains that respondent's assessments are arbitrary, he has refused to come forth with any information regarding his actual income during 1973, 1974 and 1975. Under those circumstances, he has failed to show that respondent's estimates of his income were unreasonable or that there was error in the deficiency assessments based thereon. It also appears that the penalties imposed for failure to file and failure to file on notice and demand were fully justified. Accordingly, respondent's action will be sustained in all respects.

Richard Nevins, Chairman
Georse R. Reilly, Member
- Ernest J. Dronenburs, Jr., Member
William M. Bennett, Member
, Member

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ORDER DENYING PETITION FOR REHEARING

Upon consideration of the petition filed December 1, 1980, by James H. Rose for rehearing of his appeal from the action of the Franchise Tax Board, we are of the opinion that none of the grounds set forth in that petition constitute cause for the granting thereof, particularly in view of decisions in Joseph F. Giddio, 54 T.C. 1530 (1970) and George Lee Kindred, ¶ 79, 457 P-H Memo. T.C. (1979), and, accordingly, it is hereby ordered that the petition be and the same is hereby denied and that our order of October 28, 1980, be and the same is hereby affirmed.

Done at Sacramento, California, this 29th day of Sept. , 1981, by the State Board of Equalization, with Board **Members** Mr. Dronenburg, Mr. Reilly and Mr. Nevins present.

Ernest J. Dronenburg, Jr., Chairman
George R. Reilly, Member
Richard Nevins, Member
_____, Member
_____, Member